

AMENDED IN ASSEMBLY MAY 18, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2640

Introduced by Assembly Member Arambula

February 19, 2010

An act to amend Section 17149 of, and to add Sections 17053.49 and 23649 to, add and repeal Sections 17053.49, 17148, and 23649 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2640, as amended, Arambula. Income taxes: ~~subsidized parking:~~ credits: *sales tax on* qualified property: *exclusion: qualified parking.*

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, under both laws, provide for a credit in a specified amount of the sales and use taxes paid by a qualified taxpayer for qualified property placed in service within this state, for taxable years beginning on or after January 1, 2010 2011, and before January 1, 2016.

The Personal Income Tax Law ~~provides and the Corporation Tax Law, in conformity with federal income tax law, provide~~ an exclusion from gross income for ~~compensation or the fair market value of any benefit, except salary or wages, that is received by an employee from an employer for the use of various transportation methods or arrangements~~ *specified transportation benefits provided to employees by employers*, including ~~free or subsidized~~ *qualified parking*.

This bill would, for taxable years beginning on or after January 1, 2010 2011, and before January 1, 2016, remove the exclusion from gross income for ~~free or subsidized~~ *qualified* parking.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.49 is added to the Revenue and
2 Taxation Code, to read:
3 17053.49. (a) (1) For each taxable year beginning on or after
4 January 1, ~~2010 2011, and before January 1, 2016~~, there shall be
5 allowed to a qualified taxpayer as a credit against the “net tax,” as
6 defined in Section 17039, an amount as described in paragraph (2)
7 for qualified property that is placed in service in this state.
8 (2) The amount of credit allowed by this section shall be the
9 ~~percentage~~ *full amount* of the total sales tax reimbursement or use
10 tax paid on a purchase or purchases of qualified property, the
11 revenues of which are deposited in the General Fund.
12 (b) For purposes of this section:
13 (1) *“Primarily” means 50 percent or more of a taxpayer’s*
14 *business consists of any line of business as described in paragraph*
15 *(3).*
16 ~~(1)~~
17 (2) “Qualified property” means any property that is Section
18 1245 property, as defined in Section 1245(a)(3) of the Internal
19 Revenue Code.
20 ~~(2)~~
21 (3) “Qualified taxpayer” means a ~~purchaser~~ *taxpayer primarily*
22 *engaged in any of those lines of business described in properly*
23 *classified under Codes 311111 to 339999, inclusive, of the North*
24 ~~American Industrial~~ *Industry* Classification System (NAICS)
25 Manual published by the United States Office of Management and
26 Budget, 2007 edition.
27 ~~(e) No credit, no further credit in any subsequent year, and no~~
28 ~~credit carryover shall be allowed with respect to the qualified~~
29 ~~property to any qualified taxpayer beginning in the year in which~~
30 ~~that qualified property for which a credit was allowed under this~~

1 ~~section is disposed of or removed from this state within one year~~
2 ~~of the date of purchase.~~

3 *(c) A qualified taxpayer shall notify the Franchise Tax Board*
4 *within 30 days after the qualified property is removed from the*
5 *state or is disposed of to an unrelated party in the same taxable*
6 *year. No credit shall be allowed under this section if the qualified*
7 *property is removed from the state or is disposed of to an unrelated*
8 *party in the same taxable year or the first taxable year following*
9 *the taxable year in which the qualified property is first placed in*
10 *service in this state. If any qualified property for which a credit is*
11 *allowed pursuant to this section is thereafter removed from this*
12 *state or disposed of to an unrelated party within one year from*
13 *the date the qualified property is first placed in service in this*
14 *state, the amount of the credit allowed by this section for that*
15 *qualified property shall be recaptured by adding that credit amount*
16 *to the “net tax” of the qualified taxpayer for the taxable year in*
17 *which the qualified property is disposed of or removed.*

18 *(d) In the case where the credit allowed by this section exceeds*
19 *the “net tax,” the excess may be carried over to reduce the “net*
20 *tax” in the following year, and the succeeding eight years, until*
21 *the credit is exhausted.*

22 ~~(e) (1) Credit under this section and Section 23649 shall be~~
23 ~~allowed on or before the cutoff date established by the Franchise~~
24 ~~Tax Board and shall be granted on a first-come-first-served basis.~~

25 ~~(2) For the first taxable calendar year in which this credit is in~~
26 ~~effect, the cutoff date shall be the last day of the calendar quarter~~
27 ~~within which the Franchise Tax Board estimates that the aggregate~~
28 ~~revenue increase generated from the amendments made to Section~~
29 ~~17149 by the act adding this section has reached the baseline~~
30 ~~amount. For purposes of this subparagraph, “baseline amount”~~
31 ~~means one hundred million dollars (\$100,000,000).~~

32 ~~(3) For each subsequent taxable year, the cutoff date shall be~~
33 ~~the last day of the calendar quarter within which the Franchise Tax~~
34 ~~Board estimates that the baseline amount has been reached, or that~~
35 ~~amount is adjusted each calendar year to reflect the rate of inflation~~
36 ~~or deflation from the previous date that the baseline amount was~~
37 ~~established, as measured by the Consumer Price Index or other~~
38 ~~method of measuring the rate of inflation or deflation which the~~
39 ~~Franchise Tax Board determines is reliable and generally accepted.~~

1 (e) *The credit under this section shall be allowed only for the*
2 *taxable year in which the qualified property is placed in service*
3 *in this state.*

4 (f) *The credit allowed by this section shall be in lieu of any other*
5 *credit or deduction that the taxpayer may otherwise claim pursuant*
6 *to this part with respect to sales tax reimbursement or use tax paid*
7 *on a purchase or purchases of qualified property.*

8 (g) *To reserve a credit allocation, the qualified taxpayer shall*
9 *send an application to provide satisfactory substantiation in the*
10 *form and manner proscribed by the Franchise Tax Board, that the*
11 *taxpayer is eligible for a credit allocation pursuant this section.*
12 *The taxpayer shall attach to the application the documents that*
13 *the Franchise Tax Board determines to be necessary to substantiate*
14 *the amount of sales and use taxes paid and the date that the*
15 *qualified property was placed in service in this state. Upon the*
16 *receipt of the application, the Franchise Tax Board shall notify*
17 *the qualified taxpayer that the Franchise Tax Board has reserved*
18 *the credit for the taxpayer, pending receipt of a timely filed tax*
19 *return for the taxable year.*

20 (h) (1) (A) *The total amount of credit that may be allocated*
21 *pursuant to this section and Section 23649 shall not exceed one*
22 *hundred million dollars (\$100,000,000), hereafter the “baseline*
23 *amount.”*

24 (B) *For each taxable year beginning on or after January 1,*
25 *2012, the Franchise Tax Board shall recompute the baseline*
26 *amount. That computation shall be made as follows:*

27 (i) *The Department of Industrial Relations shall transmit*
28 *annually to the Franchise Tax Board the percentage change in the*
29 *California Consumer Price Index for all items from June of the*
30 *prior calendar year to June of the current calendar year, no later*
31 *than August 1 of the current calendar year.*

32 (ii) *The Franchise Tax Board shall do both of the following:*

33 (I) *Compute an inflation adjustment factor by adding 100*
34 *percent to the percentage change figure that is furnished pursuant*
35 *to clause (i) and dividing the result by 100.*

36 (II) *Multiply the preceding taxable year baseline amount by the*
37 *inflation adjustment factor determined in subclause (I) and round*
38 *off the resulting products to the nearest one dollar (\$1).*

39 (2) *Once the credits allocated for qualified property exceed the*
40 *limit established in paragraph (1), the Franchise Tax Board shall*

1 *establish a wait list for subsequently received reservations, with*
2 *an order of priority based on the date reservation was received*
3 *by the Franchise Tax Board. The Franchise Tax Board shall notify*
4 *taxpayers on the wait list no later than December 31 of the taxable*
5 *year for which the credit was applied as to whether they have been*
6 *allocated a credit and the amount allocated.*

7 *(i) (1) Upon receipt of the information described in subdivision*
8 *(g), the Franchise Tax Board shall allocate the credit to the*
9 *taxpayer on a first-come-first-served basis.*

10 *(2) (A) Except as provided in subparagraph (B), the qualified*
11 *taxpayer shall claim the credit on a timely filed original return.*

12 *(B) Qualified taxpayers on the wait list, as described in*
13 *paragraph (2) of subdivision (h), that are allocated a credit may*
14 *claim the credit on an amended income tax return for that taxable*
15 *year.*

16 *(3) The date the information described in subdivision (g) is*
17 *received shall be determined by the Franchise Tax Board.*

18 *(j) The Franchise Tax Board may prescribe, by forms,*
19 *instructions, published notices, or regulations, any requirements*
20 *necessary for the efficient administration of this section.*

21 *(k) This section shall remain in effect until December 1, 2016,*
22 *and as of that date is repealed.*

23 *SEC. 2. Section 17148 is added to the Revenue and Taxation*
24 *Code, to read:*

25 *17148. (a) For taxable years beginning on or after January*
26 *1, 2011, and before January 1, 2016, Section 132(f)(1)(C) of the*
27 *Internal Revenue Code, relating to exclusion from income for*
28 *qualified parking, shall not apply.*

29 *(b) This section shall remain in effect until December 1, 2016,*
30 *and as of that date is repealed.*

31 ~~*SEC. 2. Section 17149 of the Revenue and Taxation Code is*~~
32 ~~*amended to read:*~~

33 ~~*17149. (a) Gross income does not include compensation or*~~
34 ~~*the fair market value of any other benefit, except salary or wages,*~~
35 ~~*received by an employee from an employer for participation in*~~
36 ~~*any ridesharing arrangement in California, including those specified*~~
37 ~~*in subdivision (b).*~~

38 ~~*(b) For purposes of this section, compensation or the fair market*~~
39 ~~*value of any other benefit received for participation in a ridesharing*~~

1 arrangement in California includes compensation or other benefit
2 received for:

3 (1) ~~Commuting in a vanpool.~~

4 (2) ~~Commuting in a private commuter bus or buspool.~~

5 (3) ~~A transit pass for use by the employee or his or her~~
6 ~~dependents, other than transit passes for use by elementary and~~
7 ~~secondary school students who are dependents of the employee.~~

8 (4) ~~Commuting in a subscription taxipool.~~

9 (5) ~~Commuting in a carpool.~~

10 (6) ~~An employee's bicycling to or from his or her place of~~
11 ~~employment.~~

12 (7) ~~Commuting by ferry.~~

13 (8) ~~The use of an alternative transportation method, other than~~
14 ~~a method otherwise specified in this subdivision, that reduces the~~
15 ~~use of a motor vehicle by a single occupant to travel to or from~~
16 ~~that individual's place of employment.~~

17 (9) ~~Travel to or from a telecommuting facility.~~

18 (e) ~~For purposes of this section:~~

19 (1) ~~"Vanpool" means seven or more persons commuting on a~~
20 ~~daily basis to and from work by means of a vehicle with a seating~~
21 ~~arrangement designed to carry 7 to 15 adults, including the driver,~~
22 ~~that is used to transport those persons who commute to and from~~
23 ~~work on a regular basis.~~

24 (2) ~~"Transit pass" means any purchase of transit rides that~~
25 ~~entitles the holder to any number of transit rides to and from the~~
26 ~~workplace, whether at a discount rate or the base fare rate.~~

27 (3) ~~"Transit" means transportation service for use by the general~~
28 ~~public that utilizes buses, railcars, or ferries with a seating capacity~~
29 ~~of 16 or more persons.~~

30 (4) ~~"Subscription taxipool" means a type of service in which~~
31 ~~employers or groups of employees contract with a public or private~~
32 ~~taxi operator to provide daily commuter service for a group of~~
33 ~~preassembled subscribers on a prepaid or daily fare basis following~~
34 ~~a relatively fixed route and schedule tailored to meet the needs of~~
35 ~~the subscribers.~~

36 (5) ~~"Ridesharing arrangement" means the transportation of~~
37 ~~persons in a motor vehicle where that transportation is incidental~~
38 ~~to another purpose of the driver. The term includes ridesharing~~
39 ~~arrangements known as carpools, vanpools, and buspools.~~

1 ~~(6) “Carpool” means two or more persons commuting on a daily~~
2 ~~basis to and from work by means of a vehicle with a seating~~
3 ~~arrangement designed to carry less than seven adults, including~~
4 ~~the driver.~~

5 ~~(7) “Buspool” means 16 or more persons commuting on a daily~~
6 ~~basis to and from work by means of a vehicle with a seating~~
7 ~~arrangement designed to carry more than 15 adult passengers.~~

8 ~~(8) “Private commuter bus” means a highway vehicle which~~
9 ~~meets all of the following criteria:~~

10 ~~(A) Has a seating capacity of at least seven adults, including~~
11 ~~the driver.~~

12 ~~(B) At least 50 percent of the mileage of which can be~~
13 ~~reasonably expected to be used for the purpose of transporting~~
14 ~~employees to and from work.~~

15 ~~(C) Is acquired by the taxpayer on or after the date of enactment~~
16 ~~of this section.~~

17 ~~(D) With respect to which the taxpayer makes an election under~~
18 ~~this paragraph on his or her return for the taxable year in which~~
19 ~~the vehicle is placed in service.~~

20 ~~(9) “Alternative commute program” means any alternative~~
21 ~~transportation method or program the purpose of which is to reduce~~
22 ~~the use of a motor vehicle by a single occupant to travel to and~~
23 ~~from that individual’s place of employment.~~

24 ~~(d) The amendments made to this section by the act adding this~~
25 ~~subdivision shall apply to taxable years beginning on or after~~
26 ~~January 1, 2010.~~

27 SEC. 3. Section 23649 is added to the Revenue and Taxation
28 Code, to read:

29 23649. (a) (1) For each taxable year beginning on or after
30 January 1, ~~2010~~ 2011, *and before January 1, 2016*, there shall be
31 allowed to a qualified taxpayer as a credit against the “tax,” as
32 defined in Section 23036, an amount as described in paragraph (2)
33 for qualified property that is placed in service in this state.

34 (2) The amount of credit allowed by this section shall be the
35 ~~percentage~~ *full amount* of the total sales tax reimbursement or use
36 tax paid on a purchase or purchases of qualified property, the
37 revenues of which are deposited in the General Fund.

38 (b) For purposes of this section:

1 (1) “Primarily” means 50 percent or more of a taxpayer’s
2 business consists of any line of business as described in paragraph
3 (3).

4 ~~(1)~~

5 (2) “Qualified property” means any property that is Section
6 1245 property, as defined in Section 1245(a)(3) of the Internal
7 Revenue Code.

8 ~~(2)~~

9 (3) “Qualified taxpayer” means a ~~purchaser~~ taxpayer primarily
10 engaged in any of those lines of business ~~described in properly~~
11 classified under Codes 311111 to 339999, inclusive, of the North
12 American ~~Industrial~~ Industry Classification System (NAICS)
13 Manual published by the United States Office of Management and
14 Budget, 2007 edition.

15 ~~(e) No credit, no further credit in any subsequent year, and no~~
16 ~~credit carryover shall be allowed with respect to the qualified~~
17 ~~property to any qualified taxpayer beginning in the year in which~~
18 ~~that qualified property for which a credit was allowed under this~~
19 ~~section is disposed of or removed from this state within one year~~
20 ~~of the date of purchase.~~

21 (c) A qualified taxpayer shall notify the Franchise Tax Board
22 within 30 days after the qualified property is removed from the
23 state or is disposed of to an unrelated party in the same taxable
24 year. No credit shall be allowed under this section if the qualified
25 property is removed from the state or is disposed of to an unrelated
26 party in the same taxable year or the first taxable year following
27 the taxable year in which the qualified property is first placed in
28 service in this state. If any qualified property for which a credit is
29 allowed pursuant to this section is thereafter removed from this
30 state or disposed of to an unrelated party within one year from
31 the date the qualified property is first placed in service in this
32 state, the amount of the credit allowed by this section for that
33 qualified property shall be recaptured by adding that credit amount
34 to the “tax” of the qualified taxpayer for the taxable year in which
35 the qualified property is disposed of or removed.

36 (d) In the case where the credit allowed by this section exceeds
37 the “tax,” the excess may be carried over to reduce the “tax” in
38 the following year, and the succeeding *eight* years, until the credit
39 is exhausted.

1 ~~(e) (1) Credit under this section and Section 17053.49 shall be~~
2 ~~allowed on or before the cutoff date established by the Franchise~~
3 ~~Tax Board and shall be granted on a first-come-first-served basis.~~

4 ~~(2) For the first taxable calendar year in which this credit is in~~
5 ~~effect, the cutoff date shall be the last day of the calendar quarter~~
6 ~~within which the Franchise Tax Board estimates that the aggregate~~
7 ~~revenue increase generated from the amendments made to Section~~
8 ~~17149 by the act adding this section has reached the baseline~~
9 ~~amount. For purposes of this subparagraph, "baseline amount"~~
10 ~~means one hundred million dollars (\$100,000,000).~~

11 ~~(3) For each subsequent taxable year, the cutoff date shall be~~
12 ~~the last day of the calendar quarter within which the Franchise Tax~~
13 ~~Board estimates that the baseline amount has been reached, or that~~
14 ~~amount is adjusted each calendar year to reflect the rate of inflation~~
15 ~~or deflation from the previous date that the baseline amount was~~
16 ~~established, as measured by the Consumer Price Index or other~~
17 ~~method of measuring the rate of inflation or deflation which the~~
18 ~~Franchise Tax Board determines is reliable and generally accepted.~~

19 ~~(e) The credit under this section shall be allowed only for the~~
20 ~~taxable year in which the qualified property is placed in service~~
21 ~~in this state.~~

22 ~~(f) The credit allowed by this section shall be in lieu of any other~~
23 ~~credit or deduction that the taxpayer may otherwise claim pursuant~~
24 ~~to this part with respect to sales tax reimbursement or use tax paid~~
25 ~~on a purchase or purchases of qualified property.~~

26 ~~(g) To reserve a credit allocation, the qualified taxpayer shall~~
27 ~~send an application to provide satisfactory substantiation in the~~
28 ~~form and manner proscribed by the Franchise Tax Board, that the~~
29 ~~taxpayer is eligible for a credit allocation pursuant this section.~~
30 ~~The taxpayer shall attach to the application the documents that~~
31 ~~the Franchise Tax Board determines to be necessary to substantiate~~
32 ~~the amount of sales and use taxes paid and the date that the~~
33 ~~qualified property was placed in service in this state. Upon the~~
34 ~~receipt of the application, the Franchise Tax Board shall notify~~
35 ~~the qualified taxpayer that the Franchise Tax Board has reserved~~
36 ~~the credit for the taxpayer, pending receipt of a timely filed tax~~
37 ~~return for the taxable year.~~

38 ~~(h) (1) (A) The total amount of credit that may be allocated~~
39 ~~pursuant to this section and Section 17053.49 shall not exceed one~~

1 hundred million dollars (\$100,000,000), hereafter the “baseline
2 amount.”

3 (B) For each taxable year beginning on or after January 1,
4 2012, the Franchise Tax Board shall recompute the baseline
5 amount. That computation shall be made as follows:

6 (i) The Department of Industrial Relations shall transmit
7 annually to the Franchise Tax Board the percentage change in the
8 California Consumer Price Index for all items from June of the
9 prior calendar year to June of the current calendar year, no later
10 than August 1 of the current calendar year.

11 (ii) The Franchise Tax Board shall do both of the following:

12 (I) Compute an inflation adjustment factor by adding 100
13 percent to the percentage change figure that is furnished pursuant
14 to clause (i) and dividing the result by 100.

15 (II) Multiply the preceding taxable year baseline amount by the
16 inflation adjustment factor determined in subclause (I) and round
17 off the resulting products to the nearest one dollar (\$1).

18 (2) Once the credits allocated for qualified property exceed the
19 limit established in paragraph (1), the Franchise Tax Board shall
20 establish a wait list for subsequently received reservations, with
21 an order of priority based on the date reservation was received
22 by the Franchise Tax Board. The Franchise Tax Board shall notify
23 taxpayers on the wait list no later than December 31 of the taxable
24 year for which the credit was applied as to whether they have been
25 allocated a credit and the amount allocated.

26 (i) (1) Upon receipt of the information described in subdivision
27 (g), the Franchise Tax Board shall allocate the credit to the
28 taxpayer on a first-come-first-served basis.

29 (2) (A) Except as provided in subparagraph (B), the qualified
30 taxpayer shall claim the credit on a timely filed original return.

31 (B) Qualified taxpayers on the wait list, as described in
32 paragraph (2) of subdivision (h), that are allocated a credit may
33 claim the credit on an amended income tax return for that taxable
34 year.

35 (3) The date the information described in subdivision (g) is
36 received shall be determined by the Franchise Tax Board.

37 (j) The Franchise Tax Board may prescribe, by forms,
38 instructions, published notices, or regulations, any requirements
39 necessary for the efficient administration of this section.

- 1 *(k) This section shall remain in effect until December 1, 2016,*
2 *and as of that date is repealed.*
3 SEC. 4. This act provides for a tax levy within the meaning of
4 Article IV of the Constitution and shall go into immediate effect.

O